

SECTION 109

MEASUREMENTS AND PAYMENTS

109.1 MEASUREMENT OF QUANTITIES:

All work completed under the contract will be measured by the Engineer according to United States standard measures. The methods of measurement and computation to be used in determination of quantities of materials furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice. A station, when used as a definition or term of measurement, will be 100 linear feet.

Unless otherwise specified, longitudinal measurements will be made along the grade line.

Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

The term ton will mean the short ton consisting of 2,000 pounds avoirdupois.

Unless otherwise specified, structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

In computing volumes of excavations or fill, the average end area method or other acceptable methods as determined by the Engineer will be used.

Volumes will be computed at 60°F, using ASTM D-1250 for Asphalt or ASTM D-633 for Tars.

Lumber will be measured by the thousand board foot measure actually used in the work. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term lump sum, when used as a pay item, will mean complete payment for the work described.

Sundry items which have a basis for measurement and payment herein and which are incidental to or required in the construction of the work but are not included as items in the ~~fee~~ schedule shall be considered an integral part of the contract, and all labor, materials, etc. required for such items shall be furnished by the Contractor and the cost of same included in the unit price.

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Where the units of measurement shown on the ~~proposal form or the methods of measurement specified in the project~~ ~~special provisions~~ differ from the measurement and payment provisions of the Uniform Standard Specifications, the project documents shall have precedence.

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109.2 SCOPE OF PAYMENT:

Measurement and payment for pay items in the proposal will be as indicated in the applicable standard specification or in the special provisions.

When payment is specified to be made on the basis of weight, the weighing shall be done on certified platform scales sealed by the State Inspector or the City Sealer of Weights and Measures as defined by Arizona Revised Statutes Sections 44-2112 and 44-2116. The Contractor shall furnish the Engineer with duplicate Weighmaster's Certificates showing the actual net weights together with the information required by Arizona Revised Statutes Section 44-2142. The Contractor shall furnish the Engineer with duplicate Weighmaster's Certificates at the time of delivery unless the Engineer designates a different submittal time. The Contracting Agency will accept the certificates as evidence of the weight delivered.

Payment for the various items in the proposal will be made at the unit price ~~in the proposal~~ and shall be compensation in full for furnishing all labor, materials, equipment and appurtenances necessary to complete the work in a satisfactory manner as shown on the plans and as required in the specifications, with all connections, testing, and related work completed. Each item, fixture, piece of equipment, etc., shall be complete with all necessary connections and appurtenances, for the

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satisfactory use and operation of said item. No additional payment will be made for work related to any item unless specifically called for in the proposal. This compensation shall also cover all risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of Section 107.

The unit prices shall include all costs for salaries and wages, all payroll additives to cover employee benefits, allowances for vacation and sick leave, company portion of employee insurance, social and retirement benefits, all payroll taxes, contributions and benefits imposed by any applicable law or regulation and any other direct or indirect payroll-related costs.

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The unit prices shall also include all costs for indirect charges, overhead, mileage, travel time, subsistence, materials, freight charges for materials to Contractor's facility or project site, equipment rental, consumables, tools, insurance costs, all applicable taxes and fees, as well as Contractor's fee and profit. The unit prices shall further include all site clean-up costs, hauling of construction debris, and proper disposal in accordance with all laws and regulations and the project plans and specifications.

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Payment will be made for only those items listed in the proposal. All materials and work necessary for completion of the project are included in proposal items. Work or materials not specifically identified by a proposal item are considered as included in the unit price of related proposal items.

Unless otherwise specified, payment will not be made for unused materials.

109.2.1 Taxes and Fees:

Taxes are deemed to include all sales, use, consumer and other taxes that are legally enacted at the time of submittal of the project fee proposal, whether or not they are yet effective or merely scheduled to go into effect. Any such taxes shall be paid by Contractor and shall be included in the unit prices.

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The Contractor shall also be responsible to contact all municipalities and other governmental agencies having jurisdictional authority over the project or the project area to determine if they will charge the Contractor other fees (e.g., permit fees) for the project work. Unless otherwise specified in the project documents or on the proposal form, the Contractor shall include the cost of such fees in the unit prices on the proposal form.

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109.3 ASSIGNMENT OF PAYMENTS:

The Contractor shall not assign payments of a contract or any portion thereof without approval of surety and written consent of the Contracting Agency.

Claims for monies due or to become due the Contractor may be assigned to a bank, trust company, or other financing institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Any assignment of money shall be subject to all proper setoffs and withholdings in favor of the Contracting Agency and to all deductions provided for in these specifications.

109.4 COMPENSATION FOR ALTERATION OF WORK:

All compensation due the Contractor for alteration of work shall be documented by a Change Order. Except in emergency situations or as otherwise directed by the Engineer, the Contractor shall not proceed with Change Order work until said Change Order has been approved and issued by the Agency.

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*109.4.1 By The Contracting Agency:

(A) For a decrease greater than 20 percent in either the total cost of the contract or the total cost of a major item and when a reasonable cost analysis supports an increase in the pro rata share of fixed cost chargeable to this item in total, an increase adjustment in the monies due the Contractor may be made. This adjusted compensation will not exceed 80 percent of the original lump sum contract amount or, if for a unit price item, the adjustment will not exceed 80 percent of the original extended unit price. This does not apply to items labeled as contingent item in the proposal.

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(B) For an increase greater than 20 percent in either the total cost of the contract or the total cost of a major item, any adjustment made will only apply to that cost in excess of 120 percent of the original total cost of the contract or, in the case of a major item, in excess of 120 percent of the original proposed extended unit price. If either party presents a reasonable cost analysis that shows a change in the pro rata share of fixed costs chargeable to this item in total, an increase or decrease adjustment will be made. This increase or decrease adjustment will be made on such basis as is necessary to cover a reasonable estimate of cost, plus an allowance, not to exceed 15 percent, for overhead and profit. If the parties are unable to reach an agreement, the Engineer has the authority to order the excess work done on an actual cost basis as specified in Section 109.5.

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(C) For either an increase or decrease in cost, no claim shall be made by the Contractor for any loss of anticipated profits.

***109.4.2 Due to Physical Conditions:**

(A) If the Engineer, after his investigation of the site conditions, agrees that they materially differ from those indicated in the contract and would cause an increase in the Contractor's cost of accomplishing the work, new unit prices or a lump sum cost (for the additional work only) may be negotiated. If the parties are unable to reach an agreement on price, the Engineer has the authority to order this additional work accomplished on an actual cost basis as specified in Section 109.5.

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(B) If the Engineer, after his investigation of the site conditions, finds that these conditions do not materially differ from those indicated in the contract, he has the authority to order the work to be accomplished at the original price(s).

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***109.4.3 Due to Extra Work:** If the Contractor can present valid, factual evidence, satisfactory to the Engineer, that the work in question is an item not provided for in the contract as awarded then a unit price or lump sum cost, for this item only, may be negotiated. If the parties are unable to reach an agreement on price or cost, the Engineer has the authority to order the extra work accomplished on an actual cost basis as specified in Section 109.5.

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109.4.4 Made at the Contractor's Request: Any alterations, if approved, will be a reduction in cost or at no additional cost to the Contracting Agency.

109.4.5 Due to Failure of Contractor to Properly Maintain the Project:

(A) For any suspension of work during normal working hours due to failure of the Contractor to properly maintain the project, there will be no additional compensation or time allowed.

(B) If the Engineer provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies resulting from abnormal weather conditions and the Contractor fails to comply in the time frame specified, the Contracting Agency may have the work accomplished by other sources. The Contracting Agency will deduct the cost of accomplishing the work from monies due or to become due to the Contractor. Computation of the cost will be in accordance with Section 109.5.4.2.

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109.4.6 Allowable Mark-Ups:

Only the allowable mark-ups as defined in Section 109.5 shall be allowed. Additional compensation for other items, including extended overhead and conditions, shall not be considered or allowed.

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***109.5 ACTUAL COST WORK:**

The compensation for actual cost work performed by the Contractor (Subcontractor) shall be determined by the Engineer in the following manner.

109.5.1 Equipment: For all equipment, the use of which has been authorized by the Engineer, except for small tools and manual equipment, the Contractor will be paid in accordance with the latest Schedule of Equipment Rates used by the Arizona Department of Transportation. Payment for equipment will be made following the calculations in Section 109 of the

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Arizona Department of Transportation Standard Specifications for Road and Bridge Construction. The value of 0.933 shall be used for the adjustment factor F used in the rental rate formulas ($F = 0.933$).

109.5.2 Material: For all material, accepted by the Engineer and used in the work, the Contractor will be paid the actual cost of such material including transportation cost, to which total cost will be added a sum equal to 15 percent thereof.

109.5.3 Labor: For all labor and for the foreman, when he is in direct charge of the operation, the Contractor will be paid:

(A) The actual wages paid plus the current percentage thereof as determined by the Arizona Department of Transportation which is deemed to cover the Contractor's cost incurred as a result of payment imposed by State or Federal Law and payments that are made to, or on behalf of, the workman other than the actual wage. Actual wage is defined as the required current hourly rate paid to the labor classification concerned and does not include any fringe benefits or dislocation allowances. If the Contractor is not required to pay fringe benefits equivalent to the Current rates published in the Federal Register, an equitable deduction will be made from the current percentage established by the Arizona Department of Transportation.

(B) For the first \$50,000 of labor cost computed under paragraph (A) above, the Contractor will be paid an amount equal to (15) fifteen percent for overhead and profit.

(C) For all labor cost computed under paragraph (A) above, in excess of \$50,000 but not exceeding \$100,000, the Contractor will be paid an amount equal to (12) twelve percent for overhead and profit.

(D) For any labor cost computed under paragraph (A) above in excess of \$100,000 the Contractor will be paid an amount equal to (10) ten percent for overhead and profit.

109.5.4 Work Performed by Subcontractors or Other Sources:

109.5.4.1 Work Performed by Subcontractors: If it is determined by the Engineer that portions of the Actual Cost Work to be performed requires specialized labor or equipment not normally used by the Contractor and such work is then authorized to be performed by a subcontractor(s), the subcontractor(s) will be paid by the Contractor in accordance with the actual cost work procedures outlined herein. The Contractor will be paid by the Contracting Agency the full amount of the subcontract plus the following percentages for administration and supervision.

(A) For the first \$10,000 accumulated total of all change order work performed by subcontractors (less mark-up for overhead and profit), the Contractor will be paid an amount equal to 10 percent of the accumulated total for administration and supervision. If the accumulated total is \$3,000 or less, the Contractor will be paid \$300 for administration and supervision.

(B) For all change order work in excess of \$10,000 accumulated total performed by subcontractors (less mark-up for overhead and profit), the Contractor will be paid an amount equal to five percent of the accumulated total for administration and supervision.

109.5.4.2 Work Performed by Other Sources: If the Contracting Agency has work performed by other sources, in accordance with ~~Section 109.4.5 (B), the Contracting Agency will deduct, from monies due or to become due to the Contractor, the full amount of the cost of accomplishing the work by other sources plus the following percentages for administration and supervision:~~

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(A) For the first \$10,000 accumulated total of work performed by other sources, the Contracting Agency will deduct an amount equal to 10 percent of the accumulated total for administration and supervision. If the accumulated total is \$3,000 or less, the Contracting Agency will deduct \$300 for administration and supervision.

(B) For all work in excess of \$10,000 accumulated total performed by other sources, the Contracting Agency will deduct an amount equal to 5 percent of the accumulated total for administration and supervision.

109.5.5 Documentation:

(A) Except in emergency situations, the Contracting Agency will not be liable for any Actual Cost Work performed by the Contractor prior to written authorization by the Engineer or prior to full execution of a written agreement by all parties concerned.

(B) Payment for work performed on an actual cost basis will not be made until the Contractor has furnished the Engineer, on forms agreed to by the Contracting Agency, duplicate itemized statements of such work, including subcontractor(s) costs, detailed as follows:

- (1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
- (2) Designation, dates, daily hours, total hours, rental rates and extension for each unit of equipment, and machinery.
- (3) Quantities of material, prices, extension and transportation cost on a daily basis. These charges shall be substantiated by vendor invoices.

(C) The Engineer will compare his records with the statement furnished by the Contractor, resolving any differences and making the required adjustments. This statement when agreed upon and signed by both parties, shall be the basis of payment for the work performed.

109.5.6 Bonds and Insurance: The Contractor shall be paid for the actual cost plus (10%) ten percent for Administrative cost when the Contractor can provide evidence of payment for premiums on required payment and performance bonds, premiums on railroad and/or airport extended liability insurance, and premiums for property damage and/or public liability insurance. No duplication of payment for Contractor's costs included under Section 109.5.3(A) will be allowed.

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109.5.7 Authority of Engineer: The Engineer is in charge of Actual Cost Work and has the authority to direct which labor and equipment will be used, to suspend operations, and to refuse to pay for any labor or equipment which he feels is not doing productive work.

109.6 PAYMENT FOR IMPROVEMENT DISTRICT PROJECTS:

Payment to the Contractor shall be made in accordance with ARS Sections 48-523 to 48-613, both inclusive.

As soon as the Contractor has fulfilled his contract, the Superintendent of Streets shall estimate the benefits arising from the work and make assessments to cover the work performed and specified in the contract, including incidental expenses in accordance with ARS Section 48-589.

The Contractor agrees to accept payment in the form of Assessments with attached Warrants and/or Improvement Bonds at the rate of interest declared in the resolution of intention prepared by the Contracting Agency.

***109.7 PAYMENT FOR BOND ISSUE AND BUDGET PROJECTS:**

(A) Partial Payments: The Contracting Agency will make a partial payment to the Contractor on the basis of an estimate prepared by the Contractor or Engineer for work completed through the last day of the preceding calendar month. Payment will be within 14 calendar days after the estimate has been certified and approved by the Engineer and received by the owner.

The Contracting Agency will retain 10 percent of all estimates as a guarantee for complete performance of the contract in accordance with Arizona Revised Statutes Section 34-221 or 34-607, unless the Contractor elects to deposit securities in accordance with Arizona Revised Statutes Section 34-221, Paragraph C.5. or 34-607, Paragraph B.5.

When the Contractor is fifty percent completed, one-half of the amount retained shall be paid to the Contractor provided he is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty percent completed, no more than five percent of the amount of any subsequent progress payments made under the contract will be retained providing the Contractor is making satisfactory progress on the project. Except that,

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if at any time the owner determines satisfactory progress is not being made, ten percent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.

Any material or equipment which will become an integral part of the completed project will be considered for partial payment in the Contractor's monthly progress payments. The intent of making partial payments is to provide the Contractor payment for direct material or equipment purchased. The purpose is to minimize the effect of escalating costs by procuring key materials. It is not the intent to pay for all materials but only those meeting the following conditions.

(1) A total value of all items requested for payment must be greater than \$20,000. No payment will be processed until the material or equipment has been observed, reviewed or verified by the Contracting Agent representative. Only the material or equipment meeting the requirements of the plans and specifications will be paid. Payment for material or equipment does not constitute final acceptance.

(2) Materials or equipment must be stored or stockpiled either on site, in a warehouse, or secured storage area. The Contractor assumes all responsibility for protection of these materials or equipment and shall insure them to cover loss or damage to same without additional liability or added costs to the Agency for providing this security, insurance, and storage.

(3) The Contractor will provide access to the storage area or warehouse upon request of the Contracting Agent's representative for the purpose of verifying the inventory of items paid for under this section. None of the materials or equipment paid for under this section will be removed from the storage site until incorporated into the work of the project. The storage site shall be within the general geographical area of the project.

(4) The Contractor shall provide a paid invoice and/or lien waiver for items paid for under this section. The Agency will not pay more than the invoice price for the item or items, less retention.

(5) The Engineer may exclude individual payment requests which in the Engineer's judgement do not warrant storage and prepayment under the intent of this section.

(B) Final Payment: When the project has been accepted as provided in Section 105, and within 30 calendar days after final inspection of the work completed under the contract, the Engineer will render to the Contracting Agency and the Contractor, a final estimate which will show the amount of work performed and accepted under the contract. All prior estimates and partial payments will be subject to correction in the final estimate for payment.

Within sixty (60) calendar days after final acceptance, the Contracting Agency will pay the Contractor all amounts due him under the contract, except that before final payment will be made, the Contractor shall satisfy the Contracting Agency by affidavit that all bills for labor and materials incorporated in the work have been paid. The Contractor's Affidavit may be obtained from the Engineering Office of the Contracting Agency.

If payment will be longer than 60 days after final completion and acceptance, the owner will provide the Contractor specific written findings for reasons justifying the delay in payment.

The acceptance of the project and the making of the final payment shall not constitute a waiver by the Contracting Agency/Owner of any claims arising from faulty or defective work appearing after the completion or from failure of the Contractor to comply with the requirements of the contract documents.

109.8 PAYMENT FOR DELAY:

The procedures contained in this Section shall not be construed to void any provision of the contract which require notice of delays, provides for negotiation of other procedures for settlement or provide for liquidated damages.

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109.8.1 Failure to Locate or Incorrect Location of Utilities: Arizona Revised Statutes 40-360 states "that if the owner or operator fails to locate or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expense to the injured party." The Contracting Agency will deny any claims for damages or delays if another owner or operator is at fault.

109.8.2 Contracting Agency Delays: Arizona Revised Statutes 34-221 states “A contract for the procurement of construction shall include a provision which provides for negotiations between the Agent and the Contractor for the recovery of damages related to expenses incurred by the Contractor for a delay for which the Agent is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract.” In this case, if the Contractor sustains damages which could not have been avoided by the judicious handling of forces, equipment and plant or by reasonable revision in the Contractor's schedule of operation, the compensation for such damages will be negotiated. The Contractor shall notify the Engineer of the condition in writing by the next work day. Failure to notify the Engineer within this time may be just cause to reject any claims for such damages.

Compensation for such damages will be negotiated as follows:

(A) The Engineer shall be satisfied that the Contractor has made every reasonable effort to prosecute the work despite any delays encountered or revisions in the Contractor's scheduling of work.

(B) The Compensation paid to the Contractor shall be in accordance with Section 109.

109.8.3 Extension of Contract Time: For any such delays, the contract time will be adjusted in accordance with Section 108.7.

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109.9 DOLLAR VALUE OF MAJOR ITEM:

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TABLE 109-1	
DOLLAR VALUE OF MAJOR ITEM	
Original Contract Amount	Dollar Value of Major Item
\$0.00 to \$1,000,000.00	\$50,000 or 10% of original contract amount, whichever is less
\$1,000,000.00 to \$5,000,000.00	5.0% of original contract amount
\$5,000,000.00 or greater	\$250,000.00 or 2.5% of original contract amount, whichever is greater

109.10 PAYMENT FOR MOBILIZATION/DEMobilIZATION

The Agency will compensate Contractor for a single round trip mobilization/demobilization of Contractor's personnel, equipment, supplies and incidentals, including establishment of offices, buildings and other facilities required for the performance of the work on the project, as well as preparatory work and operations prior to the commencement of the work on the project site.

Deleted: Such shall collectively be referred to herein as “mobilization/demobilization”.

Mobilization/demobilization will be measured for payment by the lump sum as a single complete unit of work. Payment for mobilization/demobilization will be made at the contract lump sum price. Payment shall be made in equal one-third portions. The first payment will be paid with the Contractor's initial billing. The second payment will be made when the total payments to the Contractor for the pay items, exclusive of payments for mobilization/demobilization, equal greater than one-half of the initial contracted amount, exclusive of mobilization/demobilization. The remaining one-third will be paid as part of the final payment due to the Contractor.

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When other contract items are adjusted as provided in Section 109, and if the costs applicable to such items of work include mobilization costs, such mobilization costs will be considered as recovered by Contractor in the lump sum price paid for mobilization, and will be excluded from consideration in determining compensation under Section 109.

If the Contractor performs a second or additional mobilization/demobilization of personnel, material and/or equipment at the Engineer's express written request, the Agency will compensate the Contractor for such expenses at the Contractor's actual costs. The Contractor shall provide all documentation for these costs at the request of the Engineer.

For projects that do not list mobilization/demobilization as a pay item, a single round trip mobilization/demobilization shall be considered a non-pay item for said projects, the cost of which shall be spread across other appropriate items. Should a

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second or additional mobilization/demobilization be required at the Engineer's express written request, compensation for such shall be handled as detailed in the foregoing paragraph.